IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.727/2005

Decided on.3.9.2007

P.S.E.B. & others. **…Petitioners.**

Versus

Barphu Ram and others. **…Respondents.**

Coram

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting ?[1].

For the petitioners : **Mr. Anand Sharma, Advocate.**

For the respondents: **Mr. B.C. Negi, Advocate**

Rajiv Sharma, J.

A challenge has been laid by the petitioner to the award passed by the Labour Court-cum-Industrial Tribunal, Dharamshala in reference No. 112/99 on 23.2.2005.

The brief facts necessary for the adjudication of this petition are that the State Government has made the following reference to the Labour Court-cum-Industrial Tribunal, Dharamshala:

> **"Whether the termination of services of S/Sh. Barphu Ram, Ram Dev, Jeetu, Pritam, Roop Chand and Dhian Singh, daily wages workers w.e.f. 30.11.1988 by (1). The Resident Engineer, Punjab State Electricity Board, Shanan Power House, Jogindernagar, District Mandi, Himachal Pradesh and (2) The Chairman, Punjab State Electricity Board, Patiala, on completion of 240 days' continuous service by these workers for every completed years of service for more than a decade, without any notice, charge sheet, enquiry and without compliance of section 25 (f) of the Industrial Disputes Act,**

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[1] ***Whether the reporters of Local Papers may be allowed to see the judgment***?

1947 is legal and justified. If not, to what relief of service benefits including re-instatement, back wages, seniority and amount of compensation, the above aggrieved workmen are entitled?

In sequel to the reference made by the State Government, the Labour Court had issued notices to the respondents (hereinafter referred to as the workmen), they filed their respective statement of claims. The primary contention of all the workmen before the Labour Court was that they were engaged by the employer in Shanan Power House Jogindernagar with effect from 1984 and they continued to discharge their duties upto 29th November, 1988 and they were retrenched with effect from 30.11.1988 without complying with the mandatory provisions of the Industrial Disputes Act, 1947 as well as clause 15 of the Certified Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946. They have heavily relied upon Ex.PW-5/G on the basis of which every workman who had completed 500 working days was to be converted into work-charge worker. The cut off date fixed was 31.5.1987.

The employer had contested the claim before the Labour Court primarily on the ground that the reference was belated and the engagement of the workmen was casual and on temporary basis and none of them had completed 240 days preceding 12 calendar months from the date of their retrenchment. The Labour Court on the basis of the evidence oral as well as documentary had answered the reference in affirmative on 23.2.2005.

Mr. Anand Sharma, Advocate had strenuously argued that the retrenchment was effected on 29th November, 1988 but the reference was made by the State Government in the year 1999. He also contended that the workmen had not completed 240 days and their engagement was casual in nature and the letters Ex. P-5/G as well as Ex.PW-4/C were not

applicable to the workmen. He then contended that the workmen were not entitled to the protection of clause 15 of the Certified Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946.

Mr. B.C. Negi, Advocate had supported the award dated 23.2.2005 and had supported the payment of 60% back-wages to the workmen as per the award.

I have heard the learned counsel for the parties and perused the record.

The workman i.e. respondent No.3 appeared as PW-1 before the Labour Court and he had categorically stated that he was engaged with effect from 1984 till 29th November, 1988 and had completed more than 300 working days at the time of his dis-engagement with effect from 30th November, 1988. He also testified that he had filed a civil suit before the Civil Judge at Jogindernagar, which was decreed but the appellate court had set aside the decree for lack of jurisdiction. He had further stated that he had completed 240 days at the time of his retrenchment. PW-4 Sh. Om Prakash had produced the documents Ex.PW-4/A to Ex.PW-4/C. He had categorically stated that on the basis of Ex.PW-4/A, a person who has completed 500 days on 2.9.1987 could not be terminated. He testified before the Labour Court that Sh. Roop Chand had completed 1306 working days till 2.9.1987, Pritam Singh 987 working days and Ram Dev had completed 676 working days. Smt. Malti Devi appeared as PW-5 and she brought on record the service record of the workmen i.e. Ex.PW-5/A to Ex.PW-5/F. She also placed on record notification dated 2.9.1987 Ex.PW-5/G.

The employer had produced one Shri Uttam Chand, Junior Engineer, who appeared as RW-1. He had admitted that the workmen were working during his tenure as casual labourers. He denied that the

workmen had completed 240 days. In his cross-examination, he admitted that he was not in a position to produce any documentary evidence to the effect that the workmen were engaged as casual labourers for carrying out the job of snow cutting, cleaning of tracks etc.

It is evident from Ex.PW-5/D that the workman Sh. Barphu had completed 1308 ½ working days. Sh. Ram Dev had completed 951 working days as per Ex.PW-5/E and as per Ex.PW-5/A, Sh. Jitu had completed 1088 working days whereas Sh. Pritam had completed 1307 working days as per Ex.PW-5/C. Sh. Roop Chand had completed 1616 ½ working days as per Ex.PW-5/B. Since the workmen had completed more than 500 working days as per Ex.PW-5/A to Ex.PW-5/E, they were required to be given the work-charge status as per Ex.PW-5/G. The Secretary, Punjab State Electricity Board, Patiala had addressed a communication to all the Superintending Engineer and all the Executive Engineer of the P.S.E.B. dated 22nd June, 1983 on the subject termination/ retrenchment. As per item No.1, the workmen with more than 240 days at their credit were required to be given one month notice under section 25-F (a) of the Industrial Disputes Act, 1947 and 10 days notice was required to be served upon the workmen who has put in less than 240 days to meet the requirement of Certified Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 as per item No.2 of the letter dated 22nd June, 1983.

It is thus evident that the workmen were entitled to 10 days notice even if they had not completed 240 days preceding their retrenchment as per letter dated 22.6.1983 Ex.PW-4/C. This notice admittedly has not been issued to the workmen and the finding recorded by the Labour Court to this effect is liable to be upheld. Accordingly it is held that the

retrenchment of the workmen effected with effect from 30th November, 1988 was *void ab initio*.

Now, the Court has to consider the second contention of Mr. Anand Sharma, Advocate that the reference was made at a belated stage. The retrenchment of the workmen was effected with effect from 29th November, 1988. They filed civil suit in the Court of Civil Judge, Jogindernagar in the year 1989 which was decided in the year 1991. The civil suit filed by the workmen was decreed by the trial court, against which the appeal was preferred by the employer in the court of District Judge, Mandi, Kullu and Lahaul-Spiti Districts at Mandi. The learned District Judge dismissed the suit preferred by the workmen for want of jurisdiction and had directed to return the plaint to the workmen under order 7 Rule 10-A (2) of the Code of Civil Procedure. Thereafter the workmen had filed claim before the Conciliation Officer and after the failure report, a reference has been made by the State Government in the year 1999. Accordingly there is no delay in raising the industrial dispute by the workmen taking into consideration the time spent by them before the civil courts.

The matter is required to be viewed from another angle. If the employer in any manner was aggrieved of the reference made by the State Government in the year 1999, it could challenge the same before the appropriate court. Since the reference made by the State Government was not assailed by the employer before the Court, they are estopped from challenging the same in this petition. Accordingly the contention of Mr. Anand Sharma, Advocate is rejected and it is held that reference made by the State Government was proper. The finding recorded by the Labour Court with regard to the payment of back wages is based on the proper appreciation and this Court will not interfere with the same.

The upshot of the above discussion is that:

(i) the retrenchment of the workmen effected with effect from 30th November, 1988 was *void ab initio* for non-compliance of clause 15 of the Certified Standing Orders framed under the Industrial Employment (Standing Orders) Act, 1946 read with letter dated 22nd June, 1983 i.e. Ex.PW-4/C; and

(ii) there is no delay in raising the industrial dispute by the workmen and the payment of back wages to the extent of 60% is also held to be proper.

Accordingly the writ petition is dismissed with no order as to costs.

(Rajiv Sharma), Judge

September 3, 2007
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